Supreme Court, U.S.
FILED
NOV 30 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. 88-692 (3)

IN THE
SUPREME COURT OF THE UNITED STATES

TERM COMMENCING OCTOBER 3, 1988

ROGER TEETER AND JENNIFER TEETER
D/B/A SKY'S THE LIMIT,
PETITIONER.

VS.

GRAVITY GUIDANCE, INC.,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

I. INTRODUCTION

Respondent, Gravity Guidance, Inc.[1], respectfully submits that the Petition for Certiorari should be denied on at least three grounds. First, Petitioners Roger Teeter and Jennifer Teeter d/b/a Sky's the Limit (hereinafter referred to as "Teeters") have inaccurately portrayed the District Court judgment against them and the affirmance of

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[1]Respondent Gravity Guidance, Inc. has transferred all rights of recovery for infringement of the patent-in-suit to the California corporation P/MD Corp. d/b/a American Orthopedic Rehab.

that judgment on appeal. Secondly, the alleged issues presented for review do not even approach the special and important reasons which this Court considers in deciding whether review should be taken. Third, the Teeters are simply trying to relitigate what has already been litigated and lost at the Trial Court level, and then affirmed on review by the U.S. Court of Appeals for the Federal Circuit.

II. PETITIONER'S QUESTIONS PRESENTED FOR REVIEW IN THE PETITION FOR CERTIORARI DO NOT ACCURATELY PORTRAY WHAT OCCURRED AT THE TRIAL LEVEL OR THE APPELLATE LEVEL.

The predicate bases for the Teeters' Petition for Certiorari requesting jurisdiction and review by this Court are allegations of errors

by the lower courts. The Teeters' "Questions Presented for Review" allege the lower courts disregarded issues based on patent statute 35 USC §103, disregarded the claims of the patent being sued upon, and neglected consideration of alleged prior art to the patent in finding and affirming the judgment of infringement, and willful infringement, against the Teeters.

The Teeters' jurisdictional statement claiming to support the "Questions Presented For Review" is filled with conclusory and self-serving statements not based on the record, but rather on their interpretations and conclusions of what the results should have been. Moreover, Teeters mischaracterize the

nature of the proceedings below both at the District Court level and the Appellate Court level.

This was a patent infringement action. The Teeters were at the end of a long line of infringers (all of which have unsuccessfully litigated this patent) who had entered the market for the product only when it became commercially successful. The Teeters' own discovery answers admitted that they knew about the patent well prior to entering the market with their infringing product, but chose to do so anyway. Both the Trial Court and the Court of Appeals found the Teeters' were without any reasonable basis to do so.

In spite of the fact judgments had been entered against five prior

infringers, the Teeters willfully and wantonly continued making and selling their infringing product. Utilizing the Teeters' own discovery answers and documentary evidence, Respondent Gravity Guidance, Inc. (hereinafter Gravity Guidance) filed a motion for summary judgment asking that the Trial Court find infringement, and that such infringement was willful. Gravity Guidance submitted a statement of undisputed facts which was never seriously challenged by the Teeters.

The Trial Court granted summary judgment for infringement and willful infringement, and the U.S. Court of Appeals for the Federal Circuit affirmed the same. The Teeters did not raise at the Trial Court (or on

appeal) any issues regarding these findings and conclusions that they had infringed the patent, and that such infringement was willful.

Instead, at the Trial Court, Teeters' ultimately relied solely on a cross-motion for summary judgment claiming that the patent was invalid. That both the Trial Court and the Court of Appeals rejected that motion is the basis for the present petition to this Court.

Teeters' inaccurately portray the District Court and the Court of Appeals as ignoring fundamental precepts of both the patent law and procedural rules in dealing with their summary judgment motion for

invalidity. In fact, as borne out clearly by the record and the respective judgments of Courts, the Trial Court found, after discovery was taken by the parties, full briefing was filed, evidence was submitted, and full oral argument was presented, that the Teeters did not meet their burden of proof of showing invalidity. It must be understood that the Teeters had the burden of proof to overcome the statutory presumption of validity of a patent (35 U.S.C. 282) by clear and convincing evidence; a very high standard of proof. Panduit Corp. v. Dennison Mfg. Co., 774 F.2d 1082 (Fed.Cir. 1985).

In kind, the Court of Appeals decision explicitly stated that

". . . the District Court correctly determined that Teeter had failed to carry its burden to establish anticipation, e.g., Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co., 730 F.2d 1452,1458, 221 U.S.P.Q. 481,485 (Fed.Cir. 1984) . . .". [See Appendix B, p. 5a].

It is therefore respectfully submitted that an accurate portrayal of the history of the case would reveal that (a) the Teeters abandoned any contest of infringement or willfulness of infringement, and (b) by pursuing their defense of invalidity by summary judgment motion, the Teeters' admitted that there were no genuine issues of material facts as to any of the

issues before the Trial Court. After due consideration, Gravity Guidance prevailed at the Trial Court level. Quite simply, the Teeters could not and did not meet their high burden of proof. The Appellate Court simply concurred that the Teeters' failed in carrying that burden.

The issues the Teeters' now present as alleged questions for review are either inaccurately portrayed or were waived in their two chances before the Trial Court and the Court of Appeals.

III. NO COMPELLING REASON FOR GRANTING REVIEW HAS BEEN ALLEGED BY PETITIONERS.

To invoke jurisdiction of the Supreme Court of this land, the very Rules of this Court provide that

"special and important reasons" must form the basis for consideration for such review. This is neither an ambiguous nor a meaningless standard. There must be a clear, direct and readily apparent conflict in the courts, or an issue of compelling public importance for the court to consider review. The importance must be "to the public as distinguished from" the particular "parties" involved. See, e.g., Rice v. Sioux City Cemetery, 349 U.S. 70,79 (1955). Supreme Court Rule 17 sets forth three examples of such compelling reasons.

The Teeters do not specify with clarity what reason they believe merits review by this Court. However, it is clear that any of the

questions presented for review by the Teeters are not of the urgent or compelling nature for which this Court should exercise its supervision.

As discussed above, an accurate portrayal of the case at the Trial level and Appellate level shows that the Teeters' disagree with the results of those Courts, but that they were given full opportunity to make their case. They failed to do so.

The cases cited by the Teeters, with the implication that either the Trial Court or the Court of Appeals did not follow established case law, are again only conclusory, self-serving characterizations, which are based on their flawed and inaccurate portrayal of the proceedings.

Fundamentally, Teeters' Petition for Certiorari is devoid of any special or important reason for the Court to entertain review.

IV. PETITIONERS SEEK ONLY TO RELITIGATE ONLY WHAT HAS ALREADY BEEN LOST.

The Teeters' petition for review by this respected Court is predicated only upon dissatisfaction with the results obtained at the Federal Trial Court level or Federal Appellate level.

The Teeters' simply have lost after a full and fair proceeding at the Trial Court level. They entertained an appeal of that judgment to the U.S. Court of Appeals for the Federal Circuit. The District Court judgment was affirmed in its entirety.

The present petition is simply an effort to grasp at last straws to again relitigate what has already been lost. No compelling miscarriage of justice or shocking departure from accepted or usual course of judicial proceedings has been alleged. There is no preeminent or universally important law which has been decided or have been breached in the Courts below that merits or demands review by this court.

V. CONCLUSION

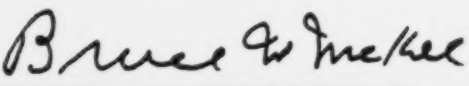
For the foregoing reasons, it is respectfully submitted that Teeters' Petition for Certiorari should be denied in its entirety. Under Supreme Court Rule 49.2, it is submitted that Teeters' petition is

frivilous and the Court is requested to award Respondent, Gravity Guidance, appropriate damages.

Dated this 30th day of November, 1988.

Respectfully submitted,

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